

Hearing date and time: October 28, 2011, 9:45 a.m.
Objection deadline: October 17, 2011

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case No.
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	09-50026 (REG)
f/k/a General Motors Corp., <i>et al.</i>	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**LIMITED OBJECTION OF THE UNITED STATES OF AMERICA TO
“APPLICATION OF THE AD HOC COMMITTEE OF ASBESTOS PERSONAL
INJURY CLAIMANTS FOR PAYMENT OF REASONABLE FEES AND EXPENSES
PURSUANT TO 11 U.S.C. SECTION 503(b)”**

The United States of America, on behalf of its agency the United States Department of the Treasury (“**Treasury**”), by and through its attorney Preet Bharara, United States Attorney for the Southern District of New York, hereby submits this limited objection to the “Application of the Ad Hoc Committee of Asbestos Personal Injury Claimants for Payment of Reasonable Fees and Expenses Pursuant to 11 U.S.C. section 503(b)” (Dkt. No. 10245) (the “**Fee Application**”), insofar as the Fee Application seeks compensation in the amount of \$276,397.00 based on an asserted “substantial contribution” of the Ad Hoc Committee’s counsel

for its opposition to the asset sale that was the indispensable prerequisite for this case's successful outcome. This Court has already rejected an indistinguishable "substantial contribution" fee application by Mark Buttita, and, for the reasons stated in its ruling denying that application, it should likewise deny the Ad Hoc Committee's application for fees and costs incurred in June and July 2009.

DISCUSSION

The Fee Application for work performed during the case's first months in June and July 2009¹ should be denied because it does not relate to work that made a "substantial contribution" to the estate, as required for fee awards under sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code. Rather, the Fee Application seeks compensation from the estate, which is funded by Treasury (along with Export Development Canada) as debtor-in-possession ("**DIP**") lender, for work opposing the sale transaction that was indispensable to the successful outcome of this case.

To be eligible for compensation by the estate for substantial contributions to a case, the applicant must have performed a service leading to "an actual and demonstrable benefit to the debtor's estate, the creditors and, to the extent relevant, the stockholders." *In re Granite Partners*, 213 B.R. 440, 446 (Bankr. S.D.N.Y. 1997). *Granite Partners* cautions that "the substantial contribution provisions must be narrowly construed," and that "[c]ompensable services foster and enhance—rather than retard and interrupt—the progress of reorganization." *Id.* at 445-46. And "services calculated primarily to benefit the client do not justify an award

¹ The Fee Application covers a substantially longer period than June and July 2009, and seeks compensation for work performed on multiple issues. While the United States has not formed the conclusion that any other aspect of the fee application is appropriate, we affirmatively object solely to the application for fees and expenses incurred in connection with the July 2009 asset sale, for which the Fee Application seeks a total of \$276,397.00. *See* Fee Application ¶ 34.

even if they also confer an indirect benefit on the estate,” *id.* at 446; *see also In re A. Tarricone, Inc.*, 83 B.R. 253, 255 (Bankr. S.D.N.Y. 1988) (creditor not entitled to “substantial contribution” fee award based on efforts to pursue client’s rights as against debtor).

The Ad Hoc Committee’s fee application is, in the part challenged here, indistinguishable from the application of Mark Buttita, which this Court rejected in its entirety. *See* Order Denying “Application of Mark Buttita for Allowance of Administrative Expenses Incurred in Making a Substantial Contribution in This Chapter 11 Case from June 4, 2009 Through July 15, 2009,” Dkt. No. 11028. As was true in the case of the Buttita fee application, far from making valuable contributions to further the success of the case or to benefit the estate as a whole, the Ad Hoc Committee’s counsel, during the early phase of this case, mounted vigorous opposition in an attempt to prevent the sale from occurring, unless certain concessions for the benefit of asbestos claimants were provided. Specifically, the Ad Hoc Committee demanded that the Court apply the requirements of Bankruptcy Code section 524(g) (concerning treatment under plans of reorganization of certain asbestos claimants) to the section 363 sale, notwithstanding that the sale was not, in fact, a plan and that the estate would need to develop a plan of liquidation at a later phase of the proceedings. In pursuit of its self-interested objectives, the Ad Hoc Committee filed and aggressively litigated objections to the proposed sale, and then, even after this Court included language concerning the constitutional limits to any injunction on future claims, persisted in seeking to stay or reverse the sale order on an expedited basis. *See, e.g.*, Dkt Nos. 1971 (Ad Hoc Committee’s Objection to Motion to Approve the Sale); 2988 (Notice of Appeal from Sale Order by Ad Hoc Committee of Asbestos Claimants); 2989 (Ad Hoc Committee’s motion to allow direct appeal of Sale Order to Second Circuit or in the alternative to stay the sale order). Not only did this course of conduct not advance the interests of the estate as a whole or

of any group other than asbestos claimants, but the Ad Hoc Committee did not succeed in this effort. Rather, the Court merely inserted into its approval of the sale an explicit statement of what the law requires, namely, that the purchaser's non-assumption of debtor obligations to future asbestos claimants was subject to whatever limits the Constitution might impose – if any. This limitation cannot be said to have made “substantial contributions” to the case's success, and also cannot be said to have been the Ad Hoc Committee's true objective, given that it persisted in opposing the sale even after the language was added.

Nor should the Court award the Ad Hoc Committee fees for work performed opposing the sale in June and July 2009 based on subsequent events in the case, such as the eventual appointment of an asbestos committee or a future claims representative. Those events, while themselves significant in the conduct of this case overall, are not attributable to the Ad Hoc Committee's work in the case's early stages. Rather, that work involved pressing actual or asserted rights that would have existed whether or not the Ad Hoc Committee's counsel performed the June and July 2009 work for which it now seeks to get paid. To confirm a plan of liquidation, Debtors needed either to secure the agreement of the asbestos claimant constituencies, or to prevail in litigation against them, which would have been time-consuming and costly. Rather than incur the expense and delay that a contested proceeding would have required, Debtors prudently negotiated and reached agreements that satisfied asbestos claimants and their representatives, thereby permitting the case to proceed to plan confirmation. It was the dynamic of seeking and securing support for the plan and treatment of claims against the estate that led to the negotiated agreements between the Debtors and the asbestos representatives – not the Ad Hoc Committee's early and strenuous opposition to the very sale that was indispensable for the orderly wind-down and payout to creditors that ultimately was achieved in this case.

In sum, because the Ad Hoc Committee seeks payment for work that sought to “retard and interrupt” the sale that was the single most important factor in this case’s success, and because that work in no way “foster[ed] and enhance[d]” the successful outcome of the case, the Fee Application should be denied to the extent it is based on work from June and July 2009.

CONCLUSION

The Ad Hoc Committee’s application for allowance of an administrative expense for fees incurred in June and July 2009 in connection with the asset July 2009 asset sale should be denied, resulting in a disallowance of at least \$276,397.00 of the total amount sought in the Fee Application.

Dated: New York, New York
October 17, 2011

PREET BHARARA
United States Attorney for the
Southern District of New York

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CERTIFICATE OF SERVICE

I, David Jones, certify that I am an Assistant U.S. Attorney in the office of Preet Bharara, United States Attorney for the Southern District of New York, and that I caused the foregoing pleading to be served as follows:

By electronic notice via ECF to all persons registered to receive such notice;

By email to the following: Elihu Inselbuch (ei@capdale.com); Rita Tobin (rct@capdale.com); Stephen Karotkin (Stephen.karotkin@weil.com); Thomas Moers Mayer (tmayer@kramerlevin.com); Michael Edelman (MJEdelman@vedderprice.com); Michael Schein (MSchein@vedderprice.com) ;

And by first class mail to the Office of the United States Trustee, and to all persons listed on the service list annexed hereto as Exhibit A.

s/ David S. Jones

New York, New York
October 17, 2011

EXHIBIT A

GENERAL MOTOR CORPORATION

SERVICE LIST

Claim Name	Address Information
ADRIAN ENVIRONMENTAL MANAGEMENT, INC.	C/O KENNETH RICHARDS 7533 WILLOW CREEK DRIVE CANTON MI 48187
AIMS/DYKEMA GOSSETT PLLC	10 SOUTH WACKER DRIVE CHICAGO IL 60606
AIMS/LATHROP & GAGE LC	2345 GRAND BLVD. KANSAS CITY MO 64108
AIMS/STEPHENS & STEPHENS	410 MAIN STREET BUFFALO NY 14202
ARCADIS BBL	10559 CITATION DRIVE SUITE 100 BRIGHTON MI 48118
ARCADIS BBL	ATTN: CHRIS PETERS 10559 CITATION DRIVE SUITE 100 BRIGHTON MI 48118
ARCADIS GERAGHTY & MILLER, INC.	ATTN: CHRIS PETERS 10559 CITATION DRIVE SUITE 100 BRIGHTON MI 48118
BT2, INC.	ATTN: MARK HUBER 2830 DAIRY DRIVE MADISON WI 53718-6751
CHARTER TOWNSHIP OF FLINT	ATTN: SANDRA S WRIGHT 1490 S. DYE ROAD FLINT MI 48532
CHARTER TOWNSHIP OF YPSILANTI	LARRY J. DOE, TREASURER 7200 S. HURON RIVER DR. YPSILANTI MI 48197
CHARTER TWP. OF GENESEE	ATTN: TOM MANNOR, TREASURER 7244 N. GENESEE ROAD P.O. BOX 215 GENESEE MI 48437
CITY OF SAGINAW, TREASURER	1315 S. WASHINGTON AVE. SAGINAW MI 48601
CITY OF SIOUX CITY	CITY TREASURER P.O. BOX 447 SIOUX CITY IA 51102
CLEAN HARBORS ENVIRONMENTAL SERVICES	P.O. BOX 3442 BOSTON MA 02241-3442
CONESTOGA-ROVERS & ASSOC.	ATTN: BETH LANDALE 22055 NIAGARA FALLS BLVD. SUITE #3 NIAGARA FALLS NY 14304
CONESTOGA-ROVERS & ASSOCIATES	22055 NIAGARA FALLS BLVD SUITE #3 NIAGARA FALLS NY 14304
ENCORE ENVIRONMENTAL CONSORTIUM	ATTN: MARK QUILTER P.O. BOX 66 6723 TOWPATH ROAD SYRACUSE NY 13214-0066
ENVIRON INTERNATIONAL CORPORATION	214 CARNEGIE STREET PRINCETON NJ 08540
ENVIRON INTERNATIONAL CORPORATION	214 CARNEGIE STREET PRINCETON NJ 08540-1980
FAVERO GEOSCIENCES	ATTN: DAVE FAVERO 1210 SOUTH 5TH STREET, SUITE 2 SPRINGFIELD IL 62703
GENERAL OIL COMPANY, INC.	35796 VERONICA ST. LIVONIA MI 48150
GLOBAL ENVIRONMENTAL ENGINEERING INC.	6140 HILL 23 DRIVE SUITE 1 FLINT MI 48507
GROUNDWATER & ENVIRONMENTAL SERVICES, INC	440 CREAMERY WAY SUITE 500 EXTON PA 19341-2577
HALEY & ALDRICH DESIGN AND CONTRUCTION	56 ROLAND STREET BOSTON MA 02129-1400
HALEY & ALDRICH OF NEW YORK	200 TOWN CENTRE DRIVE, STE 2 ROCHESTER NY 14623-4264
HDR ENGINEERING	ATTN: DICK BELL 8404 INDIAN HILLS DRIVE OMAHA NE 68114
IOWA DEPT OF NATIONAL RESOURCES	HAZARDOUS WASTE REMEDIAL FUND 502 E. 9TH STREET DES MOINES IA 50319-0034
J.A. LOMBARDI & ASSOCIATES	ATTN: JOSEPH A. LOMBARDI 445 S. LIVERNOIS - SUITE 202 ROCHESTER MI 48307
NOVA CONSULTANTS, INC	21580 NOVI ROAD #300 NOVI MI 48375
O'BRIEN & GERE ENGINEERS, INC.	ATTN: TERRY L. BROWN 5000 BRITTONFIELD PKWY SYRACUSE NY 13057-9226
ROYAL ENVIRONMENTAL, INC.	720 LEXINGTON AVENUE P.O. BOX 15719 ROCHESTER NY 14615
SEVENSON ENVIRONMENTAL SERVICES, INC.	2749 LOCKPORT ROAD NIAGARA FALLS NY 14302
THE BANK OF NEW YORK	FINANCIAL CONTROL BILLING DEPARTMENT P.O. BOX 19445 NEWARK NJ 07195-0445
THE BARTECH GROUP	17199 NORTH LAUREL PARK DR. SUITE224 LIVONIA MI 48152
TOWN OF FRAMINGHAM	TAX COLLECTOR'S OFFICE 150 CONCORD ST FRAMINGHAM MA 01702
WASHTENAW COUNTY TREASURER	P.O. BOX 8645 200 N. MAIN ST STE 200 ANN ARBOR MI 48107-8645
WASTE MANAGEMENT	P.O. BOX 9001054 LOUISVILLE KY 40290-1054
WDC EXPLORATION & WELLS	500 MAIN STREET WOODLAND CA 95695
YOUNG'S ENVIRONMENTAL CLEANUP, INC	G-5305 NORTH DORT HIGHWAY FLINT MI 48505

Total Creditor count 39